

September 30, 2011

The Honorable Hilda Solis  
U.S. Department of Labor  
Office of Health Plan Standards and Compliance  
Employee Benefits Security Administration  
Room N-5653  
200 Constitution Avenue, N.W.  
Washington, DC 20210  
Attn: RIN 1210-AB44  
Submitted via [E-OHPSCA2713.EBSA@dol.gov](mailto:E-OHPSCA2713.EBSA@dol.gov)

Dear Secretary Solis,

We, the undersigned organizations dedicated to promoting and protecting sexual and reproductive health and civil rights, write to commend you for your decision to adopt the Institute of Medicine's (IOM) recommendations regarding coverage of women's preventive health services. As the IOM said when announcing its recommendations, "Positioning preventive care as the foundation of the U.S. health care system is critical to ensuring Americans' health and well-being. Women particularly stand to benefit from additional preventive health services." We couldn't agree more, and we thank you for taking this important step forward for women's health. However, we must express our concern about the proposed amendment that would exempt some employers from the requirement to offer a health insurance plan that covers all of the recommended services.

Access to preventive services, such as birth control, education and counseling, and expanded health screening, will help women control, track, and better manage their life-long health. Women face a unique set of healthcare challenges because they use more health services than men<sup>1</sup> yet earn less on average than men.<sup>2</sup> As a result, women face a high level of health care insecurity which leads many women to forgo necessary care because of prohibitive patient cost-sharing. A recent study by the Kaiser Family Foundation found that one in seven women with private health insurance and nearly one-third of women covered by Medicaid either postponed or went without needed services in the past year because they could not afford it.<sup>3</sup> The IOM report found that contraceptive services are "appropriate medical care" for women of childbearing age on numerous grounds.<sup>4</sup> Requiring insurance providers to fully cover, without patient deductibles or co-pays, preventive services such as contraception, screenings, education, and counseling will go a long way to expanding women's access to health care services. These services are so critical to women's health and well-being that they should be available to all women without exception.

Though the proposed regulations are a great step forward, they exclude some women from contraceptive services based on the erroneous idea that certain religious employers need a "conscience" protection. As proposed, these regulations seek to exempt some employers from having to offer insurance that covers contraception to their employees. Such a refusal clause is a serious flaw in the regulation and should be deleted.

Deference to the conscience of others is fundamental to religious freedom. We respect individual conscience, but claims that refusal clauses are needed for institutional employers are not defensible. Further, the conscience of one individual cannot override a woman's right to necessary and timely medical care.

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<sup>1</sup> National Women's Law Center. (2008). *Women and Health Reform: An Introduction to the Issues*. Retrieved September 27, 2011 from [www.nwlc.org/sites/default/files/pdfs/WomenandHealthReform.pdf](http://www.nwlc.org/sites/default/files/pdfs/WomenandHealthReform.pdf).

<sup>2</sup> U.S. Census Bureau. (2009). *Income, Poverty, and Health Insurance Coverage in the United States: 2008, Table A-2*. Retrieved August 22, 2011, from [www.census.gov/prod/2009pubs/p60-236.pdf](http://www.census.gov/prod/2009pubs/p60-236.pdf).

<sup>3</sup> Kaiser Family Foundation. (May 2011). *Women's Health Care Chartbook*. Retrieved August 22, 2011, from [www.kff.org/womenshealth/upload/8164.pdf](http://www.kff.org/womenshealth/upload/8164.pdf)

<sup>4</sup> Institute of Medicine. (July 19, 2011). *Clinical Preventive Services for Women: Closing the Gaps* 89-91. Retrieved September 20, 2011, from [www.iom.edu/~media/Files/Report%20Files/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps/preventiveservicesforwomenreportbrief\\_updated2.pdf](http://www.iom.edu/~media/Files/Report%20Files/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps/preventiveservicesforwomenreportbrief_updated2.pdf).

The exemption for religious organizations in the proposed regulation creates an unreasonable barrier for women seeking appropriate medical care by requiring those who work for employers invoking the exemption to bear the substantial costs of contraceptive counseling and services. There is no explicit authority in the Patient Protection and Affordable Care Act that permits limitations on the scope of the Act's Women's Health Amendment. Section §1554 of the Act states that the "Secretary of Health and Human Services shall not promulgate any regulation that ... (1) creates any unreasonable barriers to the ability of individuals to obtain appropriate medical care or (2) impedes timely access to health care services."<sup>5</sup> The proposed refusal clause ignores this prohibition, and also ignores the conscience of the employee seeking affordable access to contraception and sterilization. The result is that those seeking legal reproductive healthcare services are subjected to unnecessary and sometimes prohibitive financial obstacles in accessing the services. Privileging an institution over an individual does not seem to comport with any reasonable definition of "conscience rights."

This exemption will put many women at risk for health problems easily avoided with proper preventive care. Employees who work for churches, synagogues and other religious institutions—including administrative employees and faculty in religion-based schools—are just some of those who would be affected by this refusal clause. In addition, the restriction would extend far beyond the direct impact on employees to their spouses and dependents as well.

The proposed religious refusal exemption should be removed entirely, as it discriminates against women on the basis of sex in violation of Section §1557 of the Patient Protection and Affordable Care Act. Proponents of a religious exemption are attempting to restrict women's access to reproductive health care. Indeed many of them are unsatisfied with the proposed amendment and complain that it does not go far enough. We implore you to resist these calls, and to end the exemption entirely. Women should not be left out of the benefits and protections of the Affordable Care Act. We ask you—for each and every woman, her family, her colleagues, their families and the many others who are relying on these new regulations—to ensure contraceptive coverage for all.

While we are encouraged by the expanded access to preventive care for women under these regulations, we urge you not to limit some women's access to affordable birth control at the same time that it is expanded for other women. We ask that you adopt this rule without the religious refusal exemption so that *all* insured women can fully benefit from the coverage of preventive care services, including contraception.

Sincerely,

Advocates for Youth  
American Association of University Women (AAUW)  
Asian & Pacific Islander American Health Forum  
Association of Reproductive Health Professionals (ARHP)  
Catholics for Choice  
Ibis Reproductive Health  
NARAL Pro-Choice America  
National Asian Pacific American Women's Forum (NAPAWF)  
National Council of Jewish Women (NCJW)  
National Organization for Women (NOW)  
National Partnership for Women & Families  
National Women's Law Center  
Nursing Students for Choice  
Raising Women's Voices for the Health Care We Need  
Religious Coalition for Reproductive Choice (RCRC)  
Reproductive Health Technologies Project (RHTP)  
Republicans for Choice PAC  
Sexuality Information and Education Council of the United States (SIECUS)

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<sup>5</sup> U.S. Government Printing Office. (January 5, 2010). *Patient Protection and Affordable Care Act*. Retrieved September 20, 2011, from [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3590enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf).